

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

Luis Martinez

Civil Action No.

V

5:20-cv-1034

Zenith Financial Network, Inc dba

ZFN & Associates

## Complaint

## Introduction

1. The Fair Debt Collection Practices Act was enacted to stop debt collectors from harassing, abusing, and making misrepresentations to and about consumers. Congress found that these practices led to the job loss, the number of personal bankruptcies, invasions of privacy, and marital disharmony.
2. Plaintiff brings this action for Defendant's violations of the FDCPA and seeks actual damages, statutory damages, attorney's fees, and costs.

## Jurisdiction & Venue

3. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.

4. Supplemental jurisdiction for Plaintiff's state law claims arises under 15 U.S.C. § 1367.
5. Venue is proper in this district and division pursuant to 28 U.S.C. § 1331 as a substantial part of the events or omissions giving rise to Plaintiff's claims occurred here.

## Parties

6. Plaintiff, Luis Martinez, is a natural person who resides in and has resided in San Antonio, Bexar County, Texas at all times relevant to this action.
7. Defendant, Zenith Financial Network, Inc dba ZFN & Associates, "Zenith" is a Florida corporation whose mailing address is 1489 W Palmetto Park Rd Ste 360 Boca Raton, Florida 33486. It may be served with process via its registered agent Incorp Services, Inc. at 815 Brazos Street, Suite 500 Austin, TX 78701.
8. Texas law requires third-party debt collectors to maintain a bond on file with the Texas Secretary of State.
9. Zenith maintains third-party debt collector bond number 61876382 with the Texas Secretary of State.
10. Zenith is a third-party debt collector.

## Facts

11. Zenith regularly collects, and attempts to collect, defaulted debts which were incurred, or alleged to have been incurred, for personal, family, or

household purposes on behalf of others using the U.S. Mail, telephone, and internet.

12. The principal purpose of Zenith is the collection of such debts.
13. The Debt is an allegedly defaulted debt that Martinez used for personal, family, and household purposes (the “Debt”).
14. In July and August 2020 Zenith made calls to Martinez in an effort to collect the Debt.
15. Zenith had not previously sent Martinez a letter and as of the filing of this lawsuit, has not sent a letter disclosing the information required by 15 U.S.C. § 1692g.
16. During the course of their conversations Zenith’s representatives threatened Martinez.
17. During the course of their conversations Zenith’s representatives made false representations to Martinez regarding the Debt.
18. During the course of their conversations Zenith’s representatives used profanity, obscenity, and harassed Martinez to the degree that he suffered an anxiety attack following the conversation.
19. As a result of the anxiety attack, Martinez sought medical attention.
20. Zenith’s conduct was designed to and did harass and abuse Martinez.

#### First Cause of Action – Fair Debt Collection Practices Act

21. Zenith is a debt collector as defined by 15 U.S.C. § 1692a(6).

22. The Debt is a debt as defined by 15 U.S.C. § 1692a(5).
23. Martinez is a consumer as defined by 15 U.S.C. § 1692a(3).
24. Zenith's phone call is a communication as defined by 15 U.S.C. § 1692a(2).
25. Zenith violated the FDCPA in that it:
  - a. Threatened Martinez in violation of 15 U.S.C. § 1692d(a);
  - b. Threatened Martinez in violation of 15 U.S.C. § 1692d(b);
  - c. Represented that non-payment of the Debt will result in loss of his property in violation of 15 U.S.C. § 1692e(4); and
  - d. Threatened to take an action that can not be legally taken or that it did not intend to take in violation of 15 U.S.C. § 1692e(5);
  - e. Failed to provide the notices required by 15 U.S.C. § 1692g.

#### **Second Cause of Action –Texas Finance Code Chapter 392**

26. Martinez is a consumer as defined by Tex. Fin. Code § 392.001(1).
27. The Debt is a consumer debt as defined by Tex. Fin. Code § 392.001(2).
28. Zenith is a third-party debt collector as defined by Tex. Fin. Code § 392.001(7).
29. Zenith's phone calls were acts of debt collection as defined by Tex. Fin. Code § 392.001(5).

30. Zenith violated the Chapter 392 in that it:

- a. used profane or obscene language or language intended to abuse unreasonably the hearer or reader in violation of Tex. Fin. Code § 392.302(1);
- b. caused a telephone to ring repeatedly or continuously, or making repeated or continuous telephone calls, with the intent to harass a person at the called number in violation of Tex. Fin. Code § 392.302(4);
- c. misrepresenting the character, extent, or amount of a consumer debt, or misrepresenting the consumer debt's status in a judicial or governmental proceeding in violation of Tex. Fin. Code §392.304(a)(8); and
- d. using any other false representation or deceptive means to collect a debt or obtain information concerning a consumer in violation of Tex. Fin. Code § 392.304(19).

### Jury Demand

31. Plaintiff demands this case be tried before a jury.

### Prayer for Relief

Plaintiff prays, that this Court enter judgment against Defendant and in favor of Plaintiff for:

- a. Actual damages per 15 U.S.C. § 1692 k(a)(1);
- b. Statutory damages per 15 U.S.C. § 1692k(a)(2);
- c. Attorney's fees, costs, and litigation expenses per 15 U.S.C. § 1692 k(a)(3);

- d. Actual damages per Tex. Fin. Code § 392.403(a)(2); and
- e. Attorney's fees, costs, and litigation expenses per Tex. Fin. Code § 392.403(b).

Dated: September 1, 2020

Respectfully Submitted,

/s/William M. Clanton  
William M. Clanton  
Texas Bar No. 24049436

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